

ORIGINAL

Approved: _____

DAVID ZHOU
Assistant United States Attorney

DOC 5

Before: THE HONORABLE GABRIEL W. GORENSTEIN
United States Magistrate Judge
Southern District of New York

15 MAG 3800

----- x
UNITED STATES OF AMERICA

- v. -

EVARISTO CRUZ-MESTIZO,
a/k/a "Evaristo Cruz,"
a/k/a "Alejandro Ponce,"
a/k/a "Evaristo Mestizo,"
a/k/a "Ponce Calixto,"

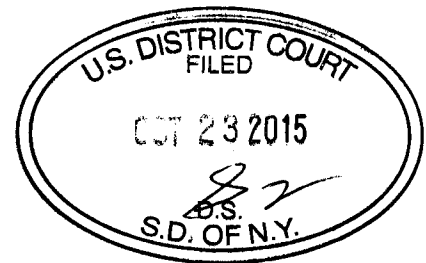
Defendant.

----- x
SOUTHERN DISTRICT OF NEW YORK, ss.:

: COMPLAINT

: Violation of
: 8 U.S.C. §§ 1326(a) &
: (b) (2)

: COUNTY OF OFFENSE:
: NEW YORK



MATTHEW LEW, being duly sworn, deposes and says that he is a Deportation Officer with the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), and charges as follows:

COUNT ONE
(Illegal Re-entry)

1. From at least on or about October 13, 2015, in the Southern District of New York and elsewhere, EVARISTO CRUZ-MESTIZO, a/k/a "Evaristo Cruz," a/k/a "Alejandro Ponce," a/k/a "Evaristo Mestizo," a/k/a "Ponce Calixto," the defendant, being an alien, unlawfully did enter, and was found in, the United States, after having been removed from the United States subsequent to a conviction for the commission of an aggravated felony, without having obtained the express consent of the Attorney General of the United States or her successor, the Secretary for the Department of Homeland Security, to reapply for admission.

(Title 8, United States Code, Sections 1326(a) & (b) (2).)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

2. I am a Deportation Officer with the United States Department of Homeland Security, ICE, and I have been personally involved in the investigation of this matter. This affidavit is based upon my personal participation in the investigation of this matter, my conversations with law enforcement agents, witnesses and others, as well as my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

3. Based upon my review of records maintained by ICE regarding EVARISTO CRUZ-MESTIZO, a/k/a "Evaristo Cruz," a/k/a "Alejandro Ponce," a/k/a "Evaristo Mestizo," a/k/a "Ponce Calixto," the defendant, I have learned, among other things, the following:

a. CRUZ-MESTIZO is a native and citizen of the Mexico and is not and has never been a citizen of the United States.

b. On or about May 1, 2003, CRUZ-MESTIZO was convicted in Union County Superior Court, North Carolina, of Taking Indecent Liberties with a Child, in violation of North Carolina General Statute § 14-202.1. Based upon my experience with ICE, I understand that this offense qualifies as an "aggravated felony" within the meaning of Section 1326(b)(2) of Title 8 of the United States Code.

c. On or about October 25, 2004, CRUZ-MESTIZO was convicted in Passaic County Superior Court, New Jersey, of Endangering the Welfare of a Child, in violation of New Jersey Criminal Code 2C:24-4A. Based upon my experience with ICE, I understand that this offense qualifies as an "aggravated felony" within the meaning of Section 1326(b)(2) of Title 8 of the United States Code. In addition, on or about October 25, 2004, CRUZ-MESTIZO was convicted in Passaic County Superior Court of Lewdness Observed by a Child Under 13 Years of Age, in violation of New Jersey Criminal Code 2C:14-4B(1).

d. On or about April 29, 2005, a final administrative Order of Removal was issued against CRUZ-MESTIZO.

e. On or about March 31, 2007, CRUZ-MESTIZO was removed from the United States to Mexico.

f. ICE has performed searches of all relevant ICE indices and confirmed that, following his removal to Mexico on or about March 31, 2007, CRUZ-MESTIZO never obtained the express consent of the Attorney General of the United States or the Secretary for the Department of Homeland Security to reapply for admission to the United States.

g. On or about October 21, 2010, CRUZ-MESTIZO was convicted in the United States District Court for the Southern District of Texas of Illegal Re-entry into the United States following removal, in violation of Title 8, United States Code, Sections 1326(a) and (b)(2). Based upon my experience with ICE, I understand that this offense qualifies as an "aggravated felony" within the meaning of section 1326(b)(2) of Title 8 of the United States Code.

h. On or about May 12, 2014, CRUZ-MESTIZO was removed from the United States to Mexico a second time.

i. ICE has performed searches of all relevant ICE indices and confirmed that, following his removal to Mexico on or about May 12, 2014, CRUZ-MESTIZO never obtained the express consent of the Attorney General of the United States or the Secretary for the Department of Homeland Security to reapply for admission to the United States.

4. Based on my review of documents from the New York City Police Department ("NYPD"), I have learned that, on or about October 13, 2015, EVARISTO CRUZ-MESTIZO, a/k/a "Evaristo Cruz," a/k/a "Alejandro Ponce," a/k/a "Evaristo Mestizo," a/k/a "Ponce Calixto," the defendant, was arrested in New York, New York, and charged with, among other offenses, Predatory Sexual Assault Against a Child, in violation of New York Penal Law § 130.96; Rape in the First Degree, in violation of New York Penal Law § 130.35(01); and Sexual Abuse in the First Degree, in violation of New York Penal Law § 130.65(01). These charges remain pending at this time. CRUZ-MESTIZO is currently detained at the Manhattan Detention Complex.

5. I have reviewed a report prepared by a trained fingerprint examiner working for ICE who reviewed the

fingerprint impression taken of EVARISTO CRUZ-MESTIZO, a/k/a "Evaristo Cruz," a/k/a "Alejandro Ponce," a/k/a "Evaristo Mestizo," a/k/a "Ponce Calixto," the defendant, on or about October 13, 2015, in connection with his arrest by the NYPD, and compared that fingerprint impression with the fingerprint impression taken of CRUZ-MESTIZO by ICE on or about July 31, 2003, as well as the fingerprint impressions taken of CRUZ-MESTIZO in connection with his October 2004 convictions in New Jersey, his March 2007 removal, his October 2010 conviction in the Southern District of Texas, and his May 2014 removal. The fingerprint impressions all came back to one and the same individual, CRUZ-MESTIZO.

WHEREFORE, deponent respectfully requests that a warrant issue for the arrest of EVARISTO CRUZ-MESTIZO, a/k/a "Evaristo Cruz," a/k/a "Alejandro Ponce," a/k/a "Evaristo Mestizo," a/k/a "Ponce Calixto," the defendant, and that he be arrested and imprisoned or bailed, as the case may be.



MATTHEW LEW
Deportation Officer
Department of Homeland Security
Immigration and Customs Enforcement

Sworn to before me this
23rd day of October, 2015



THE HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK